



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/173008

PRELIMINARY RECITALS

Pursuant to a petition filed March 23, 2016, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 21, 2016, at Milwaukee, Wisconsin. Post-hearing, the record was held open for additional information from the Petitioner and the agency. On April 22, 2015, the agency submitted additional information. On April 25, 2016, the undersigned ALJ contacted [REDACTED] in the human resources department of the Petitioner's employer to obtain work hours for the Petitioner for the months that are the subject of this matter. Ms. [REDACTED] responded on April 26, 2016 but requested a release from the Petitioner in order to release the information to the ALJ. The ALJ attempted to contact the Petitioner by telephone on three occasions – April 28, 2016, May 12, 2016 and May 17, 2016. Each time, a message indicated that the phone number has been disconnected. The ALJ sent a letter to the Petitioner on April 28, 2016 requesting that she supply a release to Ms. [REDACTED]. The ALJ received no response to the Petitioner's letter and no information from Ms. [REDACTED]. The record was closed on May 17, 2016.

The issue for determination is whether the agency properly determined that the Petitioner did not meet FSET work requirements for the months of February and March, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 14, 2016, the Petitioner completed a FS renewal. She was referred to the FSET program. A notice of FSET Referral was issued to the Petitioner on January 14, 2016. The notice contained the following language:

Time Limited FoodShare Referral

Certain adults between the ages of 18 and 49 with no minor children in the home will only get 3 months of time limited FoodShare benefits in a 36 month period, unless they meet the FoodShare work requirement. There are three ways to meet the work requirement:

- Working at least 80 hours each month,
 - Taking part in an allowable work program such as FSET, Wisconsin Works (W-2) or certain programs under the Workforce Investment Act (WIA) at least 80 hours each month, or
 - Both working and taking part in an allowable work program for a combined total of at least 80 hours each month.
3. On January 15, 2016, the FSET agency issued an initial appointment notice to the Petitioner informing her of her scheduled FSET appointment on January 25, 2016 at 9:00 a.m. Petitioner did not appear for the appointment.
4. On January 27, 2016, the agency issued an initial appointment notice to the Petitioner informing her of her scheduled FSET appointment on February 3, 2016 at 1:00 p.m.
5. On February 3, 2016, the Petitioner appeared for her initial appointment and was enrolled in the FSET program. At the orientation, the worker informed the Petitioner of the requirement to complete 20 hours of assigned activities/week or 80 hours/month.
6. On February 4, 2016, the agency sent the Petitioner an employability plan for signature. The Petitioner signed and returned the employability plan. The plan indicates that the Petitioner should complete 10 hours/week of job search activities and 10 hours/week of skills training at Rescare. The Petitioner signed the FSET Employment Search Cooperation Agreement stating that she understood and agreed that the number of hours she was assigned to for job search activities represents the actual hours that she must actively be seeking employment and that her job search logs must be completed and turned in every Friday.
7. On February 12, 2016, the agency sent an appointment notice to the Petitioner for a participation appointment on February 23, 2016 at 4:00 p.m.
8. On February 12, 2016, the Petitioner turned in a time sheet reporting 2.25 hours in the computer lab.
9. On February 16, 2016, the Petitioner turned in job logs with 10.75 hours completed.
10. On February 20, 2016, Petitioner was hired at [REDACTED]. On February 23, 2016, the Petitioner contacted the agency to report her new employment. Petitioner was advised she would need to submit 30 days of pay statements. On February 25, 2016, the Petitioner submitted a copy of an offer letter to the FSET agency.

11. On February 24, 2016, the agency issued a Notice of Proof Needed to the Petitioner informing her of the need to provide verification of employment and monthly income. The due date for the information was March 4, 2016. On March 4, 2016, the Petitioner contacted the agency and requested an extension. On March 7, 2016, the agency issued a second Notice of Proof Needed to the Petitioner for verification of monthly income with a due date of March 14, 2016. On March 14, 2016, the Petitioner contacted the agency and an extension was granted to March 21, 2016.
12. For February, 2016, the agency recorded Petitioner's work requirements/FSET participation as follows:
 - Week 1: Orientation – 2 hours
 - Week 2: Employment search – 13 hours
 - Week 3: Employment search – 10 hours

Total participation hours for February, 2016 was 25 hours.
13. On March 1, 2016, the agency received an employer verification from [REDACTED] reporting that the Petitioner works an average of 15 hours/week @ \$7.25/hour. It reported Petitioner's first paycheck was February 29, 2016.
14. On March 4, 2016, the FSET agency sent an appointment notice to the Petitioner for a participation appointment on March 15, 2016 at 3:30 p.m.
15. On March 14, 2016, the FSET agency issued a notice to the Petitioner informing the Petitioner that she has not met the work requirements.
16. On March 15, 2016, the Petitioner signed a new EP in which she agreed to participate in work or work activities totaling 80 hours/month. The Petitioner met with a worker and the worker informed the Petitioner that she is on her 2nd TLB month and she had not turned in any logs or other documents demonstrating that she is engaging in work or work activities. She was informed that because the employer verified only 15 hours/week, the Petitioner must do an additional 5 hours/week of work activities.
17. On March 18, 2016, the Petitioner turned in time sheets reporting 19 hours of work. On March 22, 2016, the Petitioner submitted one pay statement for February and one pay statement for March.
18. For March, 2016, the agency recorded Petitioner's work requirements/FSET participation as follows:
 - Week 1: 0
 - Week 2: 0
 - Week 3: Work at [REDACTED] – 19 hours
 - Week 4: Work at [REDACTED] – 36 hours

Total participation hours for March, 2016 was 55 hours.
19. The agency obtained the following information from The Work Number for Petitioner's employment with [REDACTED]:

Pay Period Ending	Hours
February 22, 2016	3.25
March 7, 2016	18.83
March 14, 2016	35.84
April 4, 2016	45.52

Based on this information, the Petitioner worked approximately 12.7 hours in February, 2016 and 77.72 hours in March, 2016.

20. On March 23, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement.

6.3.2 Non-Exempt ABAWD Participation Requirements

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. FoodShare Wisconsin Handbook, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If he does not fulfill the work requirement, he is limited to receiving no more than three months' FS during a three year period. The requirements are stated in the FSET Handbook, as follows:

6.3.2.1 Definition of Working for ABAWDs

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

6.3.2.2 ABAWD Work Requirement

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

FSET Handbook, §§ 6.3.2.1 & 6.3.2.2; and see FoodShare Wisconsin Handbook at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. FoodShare Wisconsin Handbook, §3.17.1.7. The person is limited to three months of FS eligibility in which she is not meeting the 80-hour requirement and is not exempt. Ibid., §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the individual becomes exempt or meets the work requirement for a 30-day period (the individual could reapply for FS after meeting the requirement for 30 days). Ibid., §3.17.1.11.

In this case, the agency determined that the Petitioner did not meet the 80 hours/month work or work activities requirement for the months of February and March, 2016. The agency presented evidence demonstrating that the Petitioner completed 28.25 hours of work/work activities for February, 2016 including:

Orientation:	2.00 hours
Employment search:	23.00 hours
Employment:	2.25 hours
Total	28.25 hours

The agency presented evidence demonstrating that the Petitioner completed 77.75 hours of employment for March, 2016. There was no evidence of other work activities for March, 2016.

At the hearing, the Petitioner testified that the FSET worker told her she did not have to do more and to focus on getting her work verification submitted. She also testified that she was told her work hours for the last week of March would not count.

The agency's evidence demonstrates that the Petitioner clearly did not meet work requirements for February, 2016. The Petitioner's testimony that she was unaware of the need to complete 80 hours of work/work activities for the month is not credible. The evidence demonstrates that she was informed in writing of the requirement, was informed of the requirement at her orientation and was informed of the requirement in her employability plan which she signed. Therefore, I conclude the agency properly determined that the Petitioner did not meet the FSET work requirements for February, 2016 and the agency properly determined this was the first TLB month for the Petitioner.

With regard to March, 2016, the agency did obtain The Work Number information showing the Petitioner's actual hours of work and counted all of those hours for March, 2016. This evidence demonstrates that the Petitioner still did not meet the 80 hour requirement. No job search logs or skills training logs were submitted. The only activity was Petitioner's work hours at [REDACTED]. The Petitioner was given an opportunity to present evidence to demonstrate that she did work at least 80 hours. No evidence was submitted. Therefore, I must conclude that the agency properly determined that the Petitioner did not meet the FSET work requirements for March, 2016 and the agency properly determined that this was the second TLB month for the Petitioner.

CONCLUSIONS OF LAW

The agency properly determined that the Petitioner did not meet FSET work requirements for February and March, 2016 and properly determined that there were the first and second TLB months for the Petitioner.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

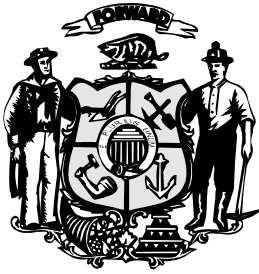
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of May, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 19, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability